



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/620,217	07/15/2003	Friedrich Ziegler	RDID03012US	8765

23690 7590 07/20/2005

Roche Diagnostics Corporation  
9115 Hague Road  
PO Box 50457  
Indianapolis, IN 46250-0457

EXAMINER

ALSOMIRI, ISAM A

ART UNIT PAPER NUMBER

3662

DATE MAILED: 07/20/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/620,217	<b>Applicant(s)</b> ZIEGLER, FRIEDRICH	
	<b>Examiner</b> Isam Alsomiri	<b>Art Unit</b> 3662	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 28 April 2005.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 42-61 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 42-61 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 03 December 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)             | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

*u*

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 54 recites the limitation "the constant distant". There is insufficient antecedent basis for this limitation in the claim.

Claims 50-51 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The term "preferably" is not a positive limitation in the claim, and is indefinite because it's unclear if the language after the term "preferably" are limiting or not.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**Claims 42-61 are rejected under 35 U.S.C. 103(a) as being unpatentable over Watanabe US 4,577,095 in view of Spink et al. US005841149A.**

Referring to claims 42-47, 54, 57, and 59-61, Watanabe discloses in figures 1 a test strip with a target surface; a measuring head arranged at a distance from the target surface, wherein the measuring head comprises of sensors 5-7 for measuring radiation from the sample; an optical triangulation unit 14; a control device for adjusting the distance between the measuring head and the target surface to a predetermined value 16, thereby permitting accurate analysis of the analyte by the measuring head (see Abstract, see col. 2 line 48 – col. 3 line 48). Watanabe teaches using passive sensors; therefore, does not teach the claimed signal source for radiating the sample and detecting reflections. Spink teaches a similar system for analyzing a sample using active measuring head (see Abstract). It would have been obvious to modify Watanabe's system to use an active measuring head for detecting reflection and obtained accurate results by analyzing specific reflections from the object to be analyzed.

Referring to claim 48, Watanabe teaches the light receiver has a collecting optical 2 system whose optical axis defines the receiving axis for focusing the light from the target surface (see figure 1).

Referring to claim 49, the combination teaches the light emitter has a light source in particular a point light source and a collimating optical system whose optical axis defines the incidence axis for generating a light beam which is incident on the target surface (see figures 1-6 of Spink, and figure 1 of Watanabe).

Referring to claims 50-51, the combination teaches the light emitter has a modulation stage (producing partly coherent light) for the time-varying and “preferably”

pulsed-shaped actuation of a light source (see Abstract). It would have been obvious to modify Watanabe to use the active sensing system of Spink using modulated light to improve S/N ration in the reflections.

Referring to claim 52, Watanabe teaches the triangulation unit has a signal processing circuit for determining changes in the distance relative to a reference position on the target surface (see Abstract).

Referring to claim 53, the combination teaches the signal processing circuit has a comparator and a timer to determine the time interval between specified signal amplitudes of output signals of the triangulation unit (see Abstract). It would have been obvious to modify Watanabe to use the active sensing system including the comparator and the timer to determine the time interval between the Tx and Rx to determine distance more accurately or as an alternative way to measure distance.

Referring to claim 55, the combination teaches a path measuring device to record the path of the measuring head for determining a height profile of the test object.

Referring to claim 56, Watanabe inherently teaches the path measuring device has a height profile store to identify the test object since the distance can be set at a predetermined value.

Referring to claim 58, the combination teaches the light source is at the same time the light emitter and/or the radiation detector is at the same time the light receiver of the triangulation unit (see Spink figure 1).

***Response to Arguments***

Applicant's arguments with respect to claims 42-61 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The prior to (Finarov; Jorgens et al.; Fujiwara et al.; Chen et al. Salzmann) all show various auto focus microscope systems which are relative to the claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Isam Alsomiri whose telephone number is 571-272-6970. The examiner can normally be reached on Monday-Friday 8:00-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas Tarcza can be reached on 571-272-6979. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

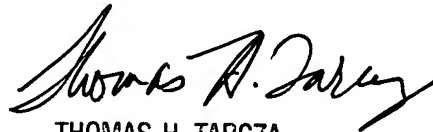
Art Unit: 3662

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Isam Alsomiri



July 15, 2005



THOMAS H. TARCZA  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3600